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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,261	04/12/2001	Hans-Michael Kuhl	22750/405A	5004
26646	7590	04/08/2004	EXAMINER DICUS, TAMRA	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			ART UNIT 1774	PAPER NUMBER

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

A-3

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/835,261	KUHL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tamra L. Dicus	1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5 and 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \*   c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

The cancellation of claim 4 is acknowledged.

#### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,254,956 to Kjellqvist et al. in view of USPN 5,571,588 to Lussi et al.

Kjellqvist provides for floor coverings using copolymers containing  $\alpha$ -olefins having 2-20 carbons at col. 2, lines 65-68 containing monomer ethylene or a combination of ethylene with  $\alpha$ -olefins. See col. 3, lines 1-5. Testing properties such as ultimate tensile strength and elongation are measured according to DIN 53504, specimen S2, 50 mm/min. cross head speed (see col. 16, lines 40-41). The elongation percentages are taught in Tables 3 and 4 ranging from 31.9 to 776 % (meeting applicant's range of a minimum elongation of 60%). The melt flow index of ethylene/styrene copolymer ranges from 1-30 g/10 min in Table 1C (col. 19, lines 40-55) (meeting applicant's range of 0.1 to 50). The floor covering of Kjellqvist generally has a thickness of from about 0.025 mm to about 25 mm (see col. 13, lines 4-9), meeting Applicant's claimed range of 1.5 – 3.5 mm. Col. 21, lines 60-68 and col. 22, lines 60-68 explain floor coverings are useful as homogeneous coverings or as an individual layer in a heterogeneous structure. At col. 15, line 24, pigments may also be included. At col. 14, lines 14-18, Kjellqvist teaches the floor coverings can contain adhesive and decorative layers. Kjellqvist

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does not teach a multicolored pattern provided by granular particles as instant claims 1, 3, and 5-6 require. Lussi teaches floor coverings with unpatterned decorative appearances. Lussi teaches at col. 5, line 65-col. 6, line 2 multicolored spheroidal resinous particles (granular particles) are used to give a uniform, unpatterned, textured inlaid appearance to the floor coverings. The particles comprise PVC (see col. 5, line 63). The floor covering includes crosslinkable copolymers in the latex layer, which include crosslinkable ethylene vinyl acetate latexes, crosslinkable acrylic latexes, ethylene vinyl chloride emulsions, PVC and polyvinyl acetate latexes, PVC and polyvinyl acetate copolymer latexes, and butadiene-acrylonitrile latexes. The latex layer includes color, providing for a multicolored or single color (instant claims 1, 3, and 5-6). See col. 4, lines 20-30. It would have been obvious to one of ordinary skill in the art to modify the floor covering of Kjellqvist to include granular colored (multi-and single colored) particles in a pattern because Lussi teaches doing so with similar materials to create a textured colored floor covering as cited above.

Kjellqvist does not show the specific percentages by weight of the copolymer and comonomer, as in instant claims 1 and 2. However, such ranges and percentages of weight are properties which can be easily determined by one of ordinary skill in the art. With regard to the limitation of the ranges and percentages of weight, absent a showing of unexpected results, it is obvious to modify the conditions of a composition because they are merely the result of routine experimentation. The experimental modification of prior art in order to optimize operation conditions (e.g. ranges and percentages of weight) fails to render claims patentable in the absence of unexpected results. See col. 12, lines 1-30 to the amounts of interpolymer and  $\alpha$ -olefins weight percentages. It would have been obvious to one of ordinary skill in the art to

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produce the weight percentages as claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272. The amounts affect the scratch resistance.

To the phrase "in the case of floor covering having widths of 1 m to 2 m" and the results when this is the case adds no positive recitation to the claim and is not a patentable limitation.

### ***Response to Arguments***

3. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection. The previous rejection over Payne is withdrawn.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamra L. Dicus whose telephone number is 571-272-1519. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on 571-272-1526. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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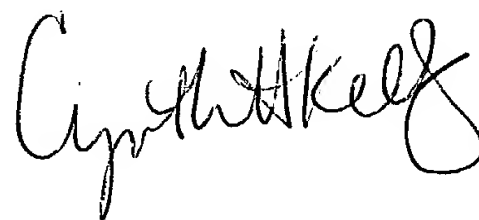
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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 5, 2004

[tld]

CYNTHIA H. KELLY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

A handwritten signature in black ink, appearing to read "Cynthia H. Kelly", written in a cursive style.